a prohibition of joint billing is potential abuse of CPNI.[14] The FCC also concluded that the potential abuses *from* joint marketing could only be adequately controlled by the imposition of some structural ● □♋□♋♦♓□■ requirement.[15]

> representative marketing both monopoly services and CPE).

<u>BOC Separation Order</u>, p. 15.

[14] Specifically, the FCC noted that

> the customer data which is needed properly to compute and send bills include ● ■□♓♦♓❖□ customer proprietary Information which should not be accessed by personnel providing unregulated products and services.

<u>BOC Separation Order</u>, p. 17.

[15] <u>See</u>, BOC Separation Ordu, p. 18, wherein the FCC states

> The BOCs . . argue that there should be no prohibition *of* joint marketing, subject to ● ppropriat8 accounting controls. The BOCs argue that, due to their diminished market power after divestiture, they should not be constrained with the joint marketing prohibition. They argue *that* customers should be able to obtain at one time both network services and CPE. We must reject these ● rguunts . . . . The BOCs have failed to identify convincing reasons why accounting controls ● ffutivaly can be employed to segregate competitive and regulated costs. As stated previously, reliance on ● ccounting systems alone to ● lloate common costs is often unsatisfactory. By requiring the total ● pamtion of marketing forces, including ● dverrfising *costs* in the case of unregulated products and services, we can ○□□♏ ● *f* fectivaly ensure that ratepayers do *not* bear costs which should be born by the competitive sector.

2. <u>Computer Inquiry III and the Ninth Circuit Reversal Thereof</u>

In the BOC Separation Order, the FCC rejected the argument that divestiture had reduced the need for structural separation. In CI-III, the FCC completely reversed its course and relieved ths BOCs of structural separation requirements. Whereas in the BOC Separation Order the FCC bad concluded that structural separation vas a necessity,[16] in CI-III the FCC reasoned that divestiture and increased competition in the enhanced services market had changed the cost/benefit of structural separation. In the FCC's new view, structural separation no longer could be viewed as the principal safeguard against monopoly abuse. The FCC therefore ● dopt8d new regulations permitting the BOCs to integrate their basic and enhanced services upon implementation of 8 plan of non-structural safeguards to be approved by the FCC.

In place of its former structural ● 8paration policy, the FCC substituted two non-structural safeguards. One safeguard is the development of cost allocation methods to minimize the ability of

---

[16] The BOC Separation Order, 95 *FCC* 2d at 1135-1136, states as follows:

> Anticompetitive conduct directed against enhanced ● lv_ico providers can be controlled by structural separation in 8 manner that may not be effective with accounting ● purtion alone. If 8 BOCs separate entity is required to obtain access to the network in the same fashion as vould 8 competing supplier, the provision *of inferior access to 8* BOC rival vould be much easier to detect. In addition, the design *of* the network to favor the BOC's own ♏■♒♋■♍♏♎ ● 8rvicm would be ● 88ier to detect since separate structure could help to reveal any illegal information transfers.

the BOCs to shift costs from their unregulated to regulated activities. The second safeguard is the adoption Of regulations designed to prevent the BOCs from using their monopoly control of the local telephone network ♦☐ discriminate ● gairut competing provider8 ⚐☓ ● x!mncad services. This latter control embraces an open netvork architecture ("ONA") policy, a requirement that each BOC notify it8 competitors in the ● &ancad services industry of changes in the network that would effect the provision of enhanced services On a timely basis, and a requirement that each BOC provide it8 competitors Vith *information* about customer use Of the telephone netvork.

In California v. FCC, the Ninth Circuit overturned the FCC's Order in CI-III, finding that the record before the FCC supplied an inadequate factual basis upon which the FCC could rationally find that the individual costs and benefits of ● tmstural separation had been *materially af* fected by changed circumstances since the BOC Separation Order. ✋■ ● 88mc0, the California v. FCC Court invalidated the FCC's new cost/benefit analysis because the record revealed no basis *for* concluding that risks *to* ratepayers and competitors from improper cross-subsidy activity was In any way lessened by event8 in the telecommunications vorld since the FCC issued it8 BOC Separation Order.[17]

---

[17] See, California v. FCC, pp. 1237-1238, wherein the Court concludes:

> . . . [T]he . . . purported ● ♍♒♋■♑♋♌♋ in the telecommunications market identified by the FCC lend no support *to* its conclusion that the risk Of cross-subsidization by the BOCs has

C. The Evidence Presented in this Case

The Commission has conducted its **own** haaring *regarding* **SBT's provision** of **MemoryCall[SM] s ervice.**[18] **The** evidence **presented** to tha **Commission in this** docket **demonstrates SBT's** clear **opportunity** *and* incentive to **behave anticompetitively** in **the VMS market** with *respect* to *natvork* **access,** aarkating practices *and* pricing (including **cross-subsidy** matters). **The** record **shows** actual

---

> *dacraaaad.* . . . **we** have already **pointed** out, **the Commissions's** conaiatant poaition **baf or.** ***Computer III*** has **always** bean that monitoring and ● nforc8mantproblama **make cost-**accounting **regulations an ineffective** tool in datacting coat-shifting. Should the **BOCs be free** *to* **integrate** *their* **basic** and enhanced operations, ■□♦♒♓■♑ in **the** record ● uggaat. **that the** FCC (or state **regulators) will** hrva any leas difficulty than before in **determining** vhathar **costs** have **been misallocated.** Indeed, **the only justification** the **Commission has** offered *for* **its heavy** ralianca on **cost-**accounting regulations *in* ***Computer III*** **is** *that* **the** riak of coat-•hifting **has** baan *reduced* by **the** four **so-called "market changes." Because, as we** have diacusaad, **the** *record* **fails** to **show** that these purported *market* change8 *have* demonstrably raducad either **cost-shifting** opportunities or *incentives, the* **Commission's** justification for **its** *new* **policy** change lack. record support. In sum, the **Commission has** failed to **explain** ● atfafactorily how **changed** circumstance8 **justify** its ● ubatitution of nonstructural ***for*** ● tmxtural ● afaguarda **to protect** talephone ratepayers **and enhanced** sarvicu **competitors** fromcroaa-subsidization.

[18] *Prior to* **the** hearing conducted **in** thia **Docket, SBT's request** to provida **MemoryCall[SM]** ● emdca on a trial **basis was the** [s] **ubject** of **Docket** No. 3896-U. **As part of its record** *in* **this case, the Commission** Incorporatea **its record** *from* Docket *No.* **3896-U.** That **record** conaiata principally *of* **prefiled testimony and exhibits** of ● avaral **parties, the transcript** of **the** hearing8 conducted **in that case,** the *transcript* **of** relevant ● **dmbiatrativa** ● **uaiona and the Commission's Orders** entered **in** that **case.**

anticompetitive behavior with respect to discriminatory 8cc.88 to the local network and marketing practices. Serious issues of • tiual cross-subsidy and predatory pricing are at least raised by the record. They must be pursued to their conclusion before the Commission Can definitely conclude whether there is actual anticompetitive behavior in the area of predatory pricing and cross-subsidy.

1. <u>Discriminatory Access to the Local Network Through Monopoly Control of the Local Network Bottleneck</u>

The record in this case demonstrates at least three significant issues of discriminatory, anti-competitive behavior by SBT in the VMS market regarding • cc8ss to the local network. In the Commission's view, the • videnco on each issue shows at 8 minimum that SBT has both the opportunity and incentive to use it. monopoly control of the local network to defeat competition in the VMS market 'through its influence on whether, how and when competitors can access the local natvork. Further, the evidence shows that SBT h.8 not h.8it.t.d to take advantage of this opportunity, ha8 used it8 monopoly control ovu the local network to gain an anticompetitive • dv.nt.go in it8 offering □ MemoryCall℠ service and will continua to do so if left unchecked by the Commission.

First, SBT' 8 trial of fer of MemoryCall℠ was undertaken in • manner that, due to technical barriers, meant that competitors to MemoryCall℠ could not use the local network, • xcapt to provide a service significantly inferior to MemoryCall℠. <u>See</u>, Testimony of

Burgess, Transcript, p. 180, 1. 2 to p. 182, 1. 3 and Section III.C.1.a below. Second, SBT refuses to allow MemoryCall℠ competitors to co-locate their VMS equipment in SBT's central offices, thereby perpetuating a distinction in product quality and price that disadvantages competitors to MemoryCall℠. See, Testimony of Burgess, Transcript, p. 71 and Section III.C.1.b below. Third, the evidence suggests the possibility that SBT has manipulated development of the local network, especially the timing of unbundling certain network features necessary for MemoryCall℠ to be offered at all, in order to maximize its competitive advantage with respect to its initial offering of MemoryCall℠. See, Section III.C.1.c below.

a. Technical Barrier Due to 1AESS Switches

The voice messaging services offered in competition to MemoryCall℠ work on Direct Inward Dial (DID) architecture. See, Testimony of Burgess, Transcript, p. 180, 1. 8-10. MemoryCall℠ is designed on a more advanced architecture that avoids the technical barrier. See, Testimony of Saner, Transcript, p. 267, 1. 2 to 1. 8, wherein it is noted that SBT's MemoryCall℠ service, because of its special access to SBT engineering, recognized the 1AESS switch technical barrier and designed both the network and its service to avoid the 1AESS switch technical barrier. The functional difference is critical, because in an area served by a 1AESS switch that has not been upgraded, the voice message services that can be offered in competition to MemoryCall℠ are grossly inferior in quality and availability. See, Testimony of Burgess, Transcript at

p. 68, 1. 6 to p. 71, 1. 2; Testimony of Dunn, Transcript, p. 340; Testimony of Saner, Transcript, p. 383, 1. 10 to p. 286, 1. 25. See also, Testimony of public witness H. Colby, a MemoryCall℠ competitor, Transcript, p. 40, 1. 3 to p. 42, 1. 3.

SBT asked that Its trial of MemoryCall℠ take place in tha Atlanta area. As it turns out, at the time of the trial, 48 central offices in Georgia had 1AESS switches, not upgraded. Thirty-three (33) of them were located in the Atlanta area. However, the vast majority, perhaps am much as 98%, of the TAS Bureaus offering services in competition to MemoryCall℠ • raloc8kd in the Atlanta area. See, Testimony of Burgess, Transcript, pp. 69-70. Stated anothar way, 88 of March, 1991, almost 8 year after the trial of MemoryCall℠ started, 29 out of 39 of the central offices where MemoryCall℠ is being offered were 1AESS switch central offices. See, Testimony of Saner, Transcript, p. 285, 1. 1 to 1. 14. The result was that, given the location chosen to trial offer MemoryCall℠, during tha trial period MemoryCall℠ was competing against voice message services that, because of technical network barriers, were grossly inferior.

Only when tha 1AESS witch problem was brought to the Commission's attention by the TAS Bureaus did SBT begin a program to upgrade the Atlanta area switches. However, at best, SBT expects that program to be completed (for all but one central office) in mid-June, 1991. See, Testimony of Burgess, Transcript, p. 184, 1. 4 to 1. 17, wherein SBT suggests through its cross-examination question, but Burgess cannot and does not confirm, that the conversions will be complete by this date; *but see also*, Testimony of Saner, Transcript, p. 288, 1. 15 to p. 289, 1. 4, noting that SBT has informed him that the central office update will not be completed until June, 1992, and further noting that th8 current schedule for updating is not being met. The remaining central office location will not be upgraded until October, 1991 at the ● rliert. Thus, for at least the first 15 months of SBT's initial entry into the VMS market with MemoryCall℠, the technical barriers of the network created an insurmountable advantage in SBT's favor regarding the quality of the voice messaging services available a8 competition to MemoryCall℠. Absent the technical barrier due to the 1AESS switch, the voice messaging services competing with MemoryCall℠ compare much more favorably with respect to quality and availability of the voice mail service.

b. *Co-Location*

SBT places its voice mail equipment (including hardware) within its central offices, thereby enabling SBT to provide a higher quality voice mail service. This action also reduces SBT's overall cost of providing MemoryCall℠ because it eliminates the need for a local transport link to provide the service. *See*, Testimony of Burgess, Transcript, p. 71, 1. 4 to 1. 23; p. 185, 1. 13 to 1. 23.

At present, TAS Bureaus must place their voice mail ● ✍♓❍◘◆ ❑■ their business premises. This reduces the quality of voice mail and necessitates paying SBT for a local transport link to the central office serving their customer. *Id*.

The TAS Bureaus have requested the opportunity to locate their voice mail equipment within SBT's central offices, that is, they have requested the opportunity to co-locate their voice mail equipment. See, Testimony of Burgess, Transcript, p. 184, l. '24 to p. 185, l. 7.

SBT ha8 received and denied such requests. Id. Since the time SBT began offering MemoryCall℠, it ha8 been their policy not to co-locate other providers' ● qufpmt in their central Of fices. If SBT granted such requests, however, the voice mail quality distinction would be ● l-ted and TAS Bureaus would not incur the extra cost o f 8 local transport link. Id.

SBT concedes that co-location is ♋■ ● dV8nt8g8 derived from its monopoly position. See, Testimony O f Daniel, Transcript, p. 503. SET also acknowledges that it refuses to allow co-location. Id., p. 502.

c. Timing of Unbundling Call Forwarding Features

The ● ❖♓♎❍♋♍♏ in this Docket indicates that the network features necessary for the TAS Bureaus to of fer their VMS options On 8 basis competitive in quality and availability to SBT's current off ● rhg Of MemoryCall℠ ● 8mh8, has ● i8t8d since at least the early 1980s.[19] The record is ● l80 clear that SBT chose not to

[19] See, Testimony of Saner, Transcript, p. 262, l. 13 to p. 263, l. 20, which establishes the following:

> [SBT] would like you to believe, the Commission, that they are the only 01188 that can provide voice messaging to the mass market and that is simply not the case. The market which they have referred to is being unserved — ha8 been unserved because Of the refusal to

unbundle the features and *offer* them *on the* network *on* an unbundled basis until SBT was prepared to *offer* MemoryCall[sm] service. See, Testimony *of* Daniel, Transcript, pp. 529 and 535. See also,

---

> offer call forvardfnq no answer and call forwarding busy line in the past. As far back 88 1982, our industry ♒♋✍ ● sk8d for these features. In 1985, I began a petition with Southern Bell asking for these features myself. What's more alarming than anything is these features havm been available since 1982, almost nine years and they're being of farad today because MemoryCall[sm] is getting into the business, *but* they're *not* being offered on an equal ● ♍♍♋✍✍ basis.
>
> Without call forwarding ■□ ● ■♋❖✍□ and call forwarding busy line, the residential market, and to *a certain* extent the small business market, which is vhat they're referring *to* as the unserved market out there, has been unmarketable. Residential users must have an automatic means of *forwarding* their calls when they're on the phone *or* out *of* the office or out of their home. They will not use call forwarding variable each time they have to 90 out to the store, go out in the yard or they vant to walk their dog. They simply do not have the discipline and they should *not* hav8 *to* have that discipline. These special calling features should have been available nine years ● qo.
>
> Had this voice messaging industry today had those features, there vould have been at least 89 voice messaging companies in Atlanta offering residential ● n8werin9 services. The price the residential marketplace vould *have* been charged vould have been market driven by the competition and the price vould havm been fair. There would not have been a pent-up demand and the unserved market vould have ken served a long time ● 90.

See also, Testimony of Saner, Transcript, p. 271, 1. 10 to 1. 19, indicating that at the outset of its business Message World was very successful in attracting residential customers for it8 voice mail service, but could *not* keep them because at that time (around 1966) SBT had not made Call Forwarding - Don't Answer and Call Forwarding - Busy Line available to the VMS market.

Testimony of Sanu, Transcript, p. 283, 1. 10 to p. 284, 1. 17 and p. 316 to p. 317, 1. 22.

The Commission finds this evidence disturbing enough because of its indication that SBT may have improperly impeded development of the VMS market for almost a decade. The evidence is even more disturbing, however, because of what it may well signal with respect to SBT's purported commitment to a proper Open Network Architecture program.[20]

---

[20]Cox Enterprises, Inc. raises this important point in its post-hearing brief, p. 12, f.n. 5, as follows:

> Under the concept of Open Network Architecture ("ONA"), new features, such as CF-NA and CF-BL, should be made available on a cost basis to whoever needs them as soon as they are technically feasible. As the FCC explains:
>
> > We consider Open Network Architecture to be the overall design of a carrier's basic network facilities and services to permit all uses of the basic network, including the enhanced service operations of the carrier and its competitors, to interconnect to specific basic network functions and interfaces on an unbundled and "equal access" basis. A carrier providing enhanced services through Open Network Architecture must unbundle key components of its basic services and offer them to the public under tariff, <u>regardless of whether its enhanced services utilize the unbundled components.</u>
>
> Third Computer Inquiry, <u>Report and Order</u>, 104 F.C.C.2d 958, 1019 (1986) ("<u>Computer III</u>") (emphasis added).
>
> The FCC felt so strongly about ONA that it stated: "We consider the development of Open Network Architecture the focal point of this proceeding. We conclude that the

In summary, the Commission finds that the record in this came demonstrates not only that SBT ham the opportunity ● ndinc=tivmto use its monopoly control of the local bottleneck to discriminate against competitors regarding access to the local network, It & a m in fact done so with respect to ● cemm to the local network by competitors of MemoryCall℠ service.

2. Marketing Abuses and Other Unfair Use of Monopoly Position

The record in this case shows that SBT engaged in ● tlmarnt the following marketing and other promotional practices with respect to MemoryCall℠ during the trial period.

1. SBT actively mold MemoryCall℠ to TAS Bureau customers who called SET to order call forwarding and other custom calling features in preparation for signing on with a TAS Bureau.

2. SBT's marketing included repair ● arvico ● ttmndantm selling MemoryCall℠ to TAS Bureau customers.

3. SBT bills for MemoryCall℠ by using its monopoly billing ● ymtmm.

---

implementation . . . of Open Network Architecture plans, approved by this Commission, is a precondition for complete elimination Of the structural rules for these carriers." Computer III, 104 F.C.C.2d at 1020.

Am this proceeding ham made clear, Southern Bell has a view of ONA all its own. According to Southern kll, Southern Bell should make new services available only when it plans to offer an enhanced service that can use them. Daniel at 533 ("ONA says when we use those ● mrvicmm ourselves, we are required ♦□ make them ● vmilmblm"). This is nothing less than an acknowledgement by Southern Bell that it views its own outside business ventures as its primary franchise motivation, not the ● arvicm demands o f its captive telephone ratepayers.

4. SBT uses its monopoly billing system to promote the sale th. MemoryCall℠ with bill stuffers.

5. SBT refuses ♦□ ● llov its VMS competitors to use its monopoly billing system to ● ithr bill VMS or promote VMS.

6. SBT uses its Customer Proprietary Network Information (CPNI) to identify prospective MemoryCall℠ subscribers, while TAS Bureaus ● rs denied real time equal access to SBT's CPNI.

See, Testimony of Burgess, Transcript, pp. 66-67, listing the marketing practices noted above and also describing the cross-subsidy concerns raised by these practices. See also, Testimony of P. Williford, public witness and competitor of MemoryCall℠, Transcript, p. 38, l. 11-23; Testimony of Saner, Transcript, p. 291, l. 21 to p. 296, l. 25, establishing points 1, 2, 3, 4, 5 and 6 above, plus other marketing and operational practices of questionable fairness. These practices are not denied by SBT. See, Testimony of Daniel, Transcript, pp. 538-41, 546-47, 555.

In the Commission's view, these practices constitute marketing and other promotional ● ctiviti.s that unfairly trade on SBT's monopoly position to the immediate end irreparable detriment of a competitive VMS market.[21] Indeed, SBT admits the validity of the concerns raised by the staff of the Commission (See, Testimony of Daniel, Transcript, pp. 444-45) and generally concedes the validity of the Commission's concerns to protect independent competitors and

---

[21] To the extent that it is not self-evident that SBT's practices threaten the development of A competitive VMS market, See, Testimony of A. Carson, A public witness and competitor of MemoryCall℠, testifying that from October, 1990 (when SBT began its concerted marketing push for MemoryCall℠) her business lost approximately $100,000.00 in annual gross revenues, the majority ● ttxibutabl. to MemoryCall℠.

fair competition in the VMS market (See, Comments Of SBT, Transcript, p. 7, 1. 9 to 1. 12). of particular concern to the Commission is the fact that SBT had earlier encountered many Of the • m8 problems in Florida when It introduced MemoryCall™ service, yet apparently SBT took no steps to curb • uch practices here until the Commission instigated its investigation into SBT's trial offer of MemoryCall™ in Georgia.[22]

Under the moat favorable construction of SBT's • ❖♓♎♋■♍♦ on these points, SBT raises two "defenses" to its actions. First, SBT claims to have corrected those abuses that deserve correction. Second, SBT asserts that certain marketing ♋♎❖♋■♦♋♑♏♦ ♓♦ enjoys • ra properly retained by it because they merely represent • 8conomi8a of scale" Of which SBT should be allowed to take advantage.

Neither the evidence nor sound regulatory policy supports either Of these two defenses. Rather, the Commission finds, as suggested by its Staff, that SBT's practice8 "raise questions regarding whether SBT and [its VMS competitors] are operating on anything like an equal footing," thereby raising "issues of fundamental fairness and competitive • quality.a See, Testimony of Burgess, Transcript, p. 67, bracketed material supplied.

MemoryCall™ enjoys a favored status because of its connection to SBT's monopoly control of the local exchange network. A business Or residential customer must initially contact SBT to

---

[22] See, Testimony of Daniel, pp. 548-49, wherein SBT admits that despite similar problems associated with SBT's earlier Florida offering of MemoryCall™, no prior preventative steps were taken to avoid such practices here, and where SBT acknowledges that this behavior vas an error on SBT's part.

● rrange for basic telephone service. SBT uses that contact to solicit interest in MemoryCall℠. This vut marketing *opportunity* is uniquely possessed by SBT. SBT claims that this circumstance does not constitute an unfair advantage. See, Testimony of Daniel, Transcript, p. 538. The competitors of MemoryCall℠ take an opposite view, which the Commission shares. See, Testimony of public witness P. Andreson, 8 competitor of MemoryCall℠, listing numerous MemoryCall℠ marketing practices contended to be unfair, Transcript, p. 43, 1. 18 to p. 16, 1. 4 and p. 46, 1. 21 to p. 47, 1. 2.

SBT's position as monopoly provider of local ● ☒♍♒✓⍯■♑♋ service allows it to develop and access 8 data base of information on customers known 88 CPNI. CPNI contains all the information SBT has on each telephone customer, including the customer 's credit history, number of lines, services, 8nd special calling features. This information, together with customer call completion data that is available ● %clusiV8ly to SBT, is indispensable for a targeted marketing campaign 8nd has bun used by SBT in its own marketing. See, Testimony of Burgess, Transcript, p. 67 and p. 176, 1. 8 to p. 179, 1. 12; Testimony of Madan, Transcript, p. 194, 1. 15 to p. 197, 1. 3.; Testimony of Daniel, Transcript, p. 542.

both SBT and its competitors may obtain access to CPNI. All that is required ♓♦ ● uthoritat;ion from the customer. However, SBT has ● ♦ up a system for CPNI authorization that disadvantages its competitors. Under the system SBT has set up, CPNI is available for immediate on-line, real time use by SBT unless SBT's customer explicitly and in writing prohibits t&at information being available. On the othu band, *if* a MemoryCall℠ competitor wishes to access CPNI,' SBT requires that its competitors obtain explicit authorization *from* the customer in order to view the information. See, Testimony of Burgess, Transcript, pp. 176-79 ; Testimony of Daniel, Transcript, pp. 494-97. The procedures set up deny ● ♓⧫♌♏❐ on-line or real time access to CPNI by MemoryCall℠ competitors. See, Testimony of *Saner*, Transcript, *p.* 270, l. 17 to p. 271, l. 1. Indeed, SBT admits its advantage in this area. See, Testimony of Daniel, Transcript, pp. 495-500. Nonetheless, SBT refuses to ● ⧫♋●♓⌘⧫ the ❐❐❐♍♏♎⧫❐♏ for access to CPNI. Id.

As shown by the ● vidanca in this case, in *order* ♐❐❐ ● TAS Bureau client to utilize the TAS Bureau's competing service, the client must arrange for some form of call forwarding through SBT. When contact is made with SBT for that purpose, SBT markets MemoryCall℠. See, Testimony of Burgess, Transcript, p. 66. SBT claims to have instructed its employees to cease this practice. However, there is ● vidmca that unfair marketing continues to occur. See, Testimony of Daniel, Transcript, p. 581. In addition, repair service personnel have marketed MemoryCall℠. Once again, SBT claim8 to hava stopped this practice. However, there ● e reports that such practices persist. See, Testimony of Daniel, Transcript, pp. 578-79.

SBT uses its monopoly billing service to bill for MemoryCall℠. See, Testimony *of* Burgess, Transcript, p. 66. Under this approach, MemoryCall℠ customers are charged *for* that service in a manner that does not identify the charge ● parata from SBT's charge for basic telephone s ervice. Rather, the charge is bundled together with the charges for regulated calling features. The charge appears as a single item designated "enhanced services." See, Testimony of Dunn, Transcript, p. 351. This practice facilitates collection because it incorporates MemoryCall℠ billing into the monopoly billing service. This practice 8180 simplifies the process for the customer and makes MemoryCall℠ more attractive. Other independent voice messaging services have requested that they be permitted to bill in 8 similar fashion, 80 that their customers can also benefit from a simplified billing process. SBT refuses to *honor* these requests. See, Testimony of Daniel, Transcript, p. 501.

In addition, SBT US88 its monopoly billing service to promote (i.e., advertise and solicit) MemoryCall℠ service. SBT does not allow other voice messaging services to utilize this marketing channel. See, Testimony of Daniel, Transcript, p. 540; Testimony of Dunn, Transcript, p. 350.

In the Commission's view, the record with respect to SBT's marketing of MemoryCall℠ shows that SBT will not make ● mn a cursory attempt to curb potential and actual abuses of its monopoly *position* unless ● ♎ until regulatory intervention is threatened or occurs. SBT's ● ◆□♐♓□■ that It will and has now taken steps to prevent such abuses, ⬩♋■ If believed and even if it is ● ⬧◆🖬♎ that such steps will prove effective, simply misses the point. As succinctly stated by ATC, *an* intervenor *in* this case, what

> "SBT appears to overlook is that an appropriate competitive environment cannot be

> maintained in the long run by simply having SBT correct its abusive practices after the fact. Rather, long run competition requires that SBT compete on a basis that removes the opportunity and incentive for abuse of the monopoly, or at least minimizes the likelihood that such abuse will occur."

See, ATC post-hearing brief, p. 4.

SBT asserts that it enjoys ● canomi88 of scale, particularly with respect to marketing, that allow it to offer MemoryCall℠ at prices below those at which its competitors offer their services. It is clear to the Commission that the principal economies of scale advocated by SBT in ♦♒♓♦ proceeding are ● dvantag88 derived largely, if not exclusively, by virtue of SBT's monopoly position as provider of local ● xchanga service. See, Testimony of Daniel, Transcript, pp. 489-492, 500-03, 512, 538. See also, the recitals herein of the advantages enjoyed by SBT regarding 'billing and marketing, Including especially initial contact with customers and use of CPNI; Testimony of public witness S. Taylor, ● competitor of MemoryCall℠, regarding the unfair advantage SBT enjoys in marketing MemoryCall℠ because of SBT's unequal access to CPNI, Transcript, p. 47, 1. 19 to p. 49, 1. 8. SBT's posture is that if it is allowed to utilize the advantages of its monopoly position, It can offer MemoryCall℠ 1888 expensively than any of the services that compete with it. However, these economies of scale are ● dvant8q.8 SBT ● pprar8 to enjoy solely due to it.8 monopoly position. There appears to be no sound policy reason to allow SBT to leverage its monopoly position to the detriment of ● competitive VMS market through these practices, especially where it has not been demonstrated that fair compensation is being paid to ratepayers who pay the price for the monopoly position that SBT is able to leverage. See, Section III.C.3 below.

3. Cross-Subsidies and the Possibility of Predatory Pricing

Nothing in this record disproves the possibility that MemoryCall[SM] is cross-subsidized and/or predatorily priced. Rather, the record suggests the opposite possibility, namely that MemoryCall[SM] is priced below cost. See, Testimony of Burgess, Transcript, p. 71, l. 25 to p. 76, l. 2; p. 117, l. 5 to p. 118, l. 15. See also, Testimony of public witness P. Andreson, a competitor of MemoryCall[SM], that MemoryCall[SM] cannot be offered at the price charged by SBT and cover the true cost to SBT of even just the phone lines, trunk line8 and equipment necessary to technically provide MemoryCall[SM], Transcript, p. 46, l. 5 to l. 20; Testimony of Saner, ● ♦♋♌●♓♦♌♓■♑ numerous ♓♦♦♦♏♦ of predatory pricing and cross-subsidy relating to MemoryCall[SM], Transcript, p. 297, l. 1 to p. 315, l. 20.

The ultimate answer to th. question whether MemoryCall[SM] is predatorily priced (i.e., improperly cross-subsidized) is relatively simple. SBT shall file, and all interested parties shall have the opportunity to ● alyza and assess a complete cut of service study for MemoryCall[SM] service, including all workpapers thereto. In the Commission's view, this is the only reliable way in which the issues of cross-subsidy and predatory pricing can be definitively determined.

The fact that the record in this case does not currently contain the data from which such an analysis ♍♋■ ● lrordy be made is troubling. The Commission's First and Third Supplemental Orders, issued in March, 1991 in Docket No. 3896-U, required SBT to file sufficient cost data demonstrating that the proposed rates for MemoryCall℠ service are just and reasonable. SBT made no such filing. Indeed, SBT filed *no* cost data *of* any type at 811 until the last day of the hearings in this case, Docket No. 4000-U. Ostensibly, the reason vu that the prior orders of the Commission requiring such filing were ● tayod by the Fulton County Superior Court in April, 1991. Whatever the reasons, the actual cost analysis filed by SBT at the close of this Docket is insufficient to ● llov the record in this case to reflect a detailed, reasoned analysis of the true cost to SBT of providing MemoryCall℠. There are at least two reasons why this is true.

First of all, the data that SBT did supply was filed with the Commission only hours before the record in this Docket vu concluded. No party *had* sufficient time to analyze and discover the matters raised by the cost analysis. In addition, the cost data supplied by SBT is not a complete cost study. It is at but • summary ♇♐ • cost analysis. It does not constitute a complete cost study, including all workpapers. Moreover, even SBT's summary excludes what it considers to be sensitive and/or proprietary information.

IV.

THE POLICY TO BE ADOPTED

The broad regulatory goal set by the Commission is to promote the development of intrastate ES and VMS markets to their ● fficimnt, competitive extreme. The Commission believes that this policy ● ☠✍✉ the long term best interest of SBT, its ratepayers, the telecommunications □◆♌●♓♍ and the general ● conomic welfare of ⧫♒♓⬧ State. Attainment of this goal is promoted by SBT's presence in these markets if that presence *assists*, rather *than* retards development tovard ● fficiant, competitive ends. SBT's presence ♓■ the ES and VMS markets will have the desired ● *ffact* only where its ability and incentive to defeat competition by us. of its monopoly control over the local telephone system is prevented and/or deterred. In the specific context of this case, the Commission embarks on ● course designed to foster development of the VMS market to ✋◆⬧ ● fffciant, competitive and by ♏■♍□◆□♋♑♓■♑ SBT's presence in the VMS market under conditions that prevent and/or deter SBT's opportunity and interest to use Its monopoly control of the local telephone system to defeat competition. We do so by embracing the following policy positions.

First, we not. and adopt the policy of promoting the development of ES markets, specifically including the VMS market, to their efficient, competitive extreme, as described above and ● ls.vh.r. in this Order.

Second, we state our belief that SBT's proper participation in the ES and VMS markets is an important, positive ingredient if the Commission's broad regulatory goal is to be ● tt8fn8d.

Third, we embrace the general regulatory framework for regulating SBT's provision of ES and VMS, a8 established by the Staff in this case. That framework is consistent with the Commission's broad regulatory goal. See, Testimony and Appendix of Jamshed K. Madan, the content of which $8 incorporated herein by reference as if fully restated.[23] Specifically, we state our

[23] The conclusions and recommendations Of the ♦♦♋♐♐ ● r8 ● mmariZd in Mr. Madan's testimony as follows (Transcript, p. 83, l. 1 to p. 85, l. 7).

1. As a general rule, SBT's provision of enhanced services should be fully regulated to the extent permitted by law, until such time as the enhanced service is subject to complete competition. The Commission may exercise less than full regulation prior to complete competition if the facts demonstrate there is a need for 1888 than full regulation.

2. Full regulation means the price Of an enhanced service is set by tariff approved by the Commission, the revenue requirement Of the enhanced ● 8miC8 is treated above the line and practices constituting impermissible cross-subsidy and unfair, anti-competitive behavior ● r8 detected and checked. Full deregulation means that an enhanced ● 8miC8 is detariffed, the revenue requirement is treated below the line and no checks on croaa-subsidy or anti-competitive behavior are applied.

3. At no time prior to full deregulation of an enhanced service should the revenues, expenses and investment ● 88OCi8t8d with the enhanced service be treated below the line.

4. During the period when enhanced ● 8mfice8 ● 8 regulated, the Commission should take steps to ensure appropriate allocation of the cost of services that ● r8 shared between the regulated side of SBT and the enhanced service, the goal being to preclude impermissible cross-subsidy.

belief that ● pplying the regulatory framework described by the Staff to SBT's provision of MemoryCall℠ service will have the result designed by the staff: The VMS market will ● trend its best chance of developing to a condition of complete competition. The Commission views complete competition to be the functional ● WiVShI%t Of driving the VMS market to it8 efficient, competitive end. Therefore, once the ● pproprimta regulatory controls are put in place mm referenced below, SBT's provision of MemoryCall℠

5. The Commission ● hould not determine whether it shall fully deregulate SBT's provision of an enhanced service Until it has been demonstrated to the Commission's ● ♋♦♓❍♐♋♍♦♓□■ that complete competition exists with respect ♦□ the ● fQmnc8d ● mrvica. The Staff comments Upon the type of market conditions and other factors that may be important to invastigatm in order to determine whether complete competition exists, however, the Commission should sat a proceeding to define with particularity the tut of complete competition that must be met before the Commission will consider fully deregulating an enhanced service.

6. At the point when it has bun shown to the Commission's ● atimfaction that an enhanced ● arvica is ● ubjact to complete competition, both the Commission and SBT should be indif ferent to whether tha ravanuam, expenses and investment ● aaociatad with ● nhancad ● ervices ● ra treated above or below tha line for purposes of determining intrastate, regulated cost of service. At that point the Commission is faced with a policy decision whether to fully deregulate an enhanced ● arvica by taking the revenues, expenses and investment below the line.

7. Even where the Commission chooses to fully deregulate an enhanced ● ♦❖♓♍♋ because it is ● ♋♦♓❍♐♓♋♎ that an ● bancad service is ● ubject to complete competition and that SBT is not engaged in improper anti-competitive practices, the Commission should retain its jurisdiction to regulate the ● hancad service where conditions of complete competition do not persist or where policy considerations otherwise dictate that the enhanced service should be re-regulated.

service shall thereafter be regulated in the manner described by the Staff.[24]

Fourth, the Commission determines that SBT's current, virtually uncontrolled presence in the VMS market presents the opportunity and incentive for SBT to use Its monopoly control *of* the local telephone system to defeat competition. SBT's actual

---

[24]A summary description of the specific ratebase, rate *of* return method *of* regulating MemoryCall℠ is provided by Mr. Madan (Transcript, p. 86, 1. 17 to p. 87, 1. 33) as follows:

1. As 8 general rule, Mm Commission should fully regulate SBT's provision of enhanced services until such time as SBT's provision of the enhanced service is subject to complete competition.

2. During at least the initial period of regulation, the price for MemoryCall℠ *8nd other* ● ■♒︎⍓■♍︎♋︎♎︎ services should be set by tariff approved by the Commission. Upon appropriate showing by SBT, the Commission may partially deregulate by detariffing *prior* to complete competition.

3. During the period of regulation, the revenues, expenses and investment associated with ● nhsncad services should be treated above the line when determining the intrastate, regulated cost of service of SBT.

4. During the period *of* regulation, the Commission should pay particular attention to determining whether the allocation of the cost of services shared between the regulated side ʻof SBT and the enhanced services are appropriate and do not lead to impermissible cross-subsidy.

5. During the pèriod Of regulation, the Commission should take steps to insure that aspects Of SBT's provision Of enhanced services othu than revenue requirement aspects (i.e., other than pricing issues and issues about including revenues, expenses and investment above or below the line) • ra fair and proper. These matters would include, for instance, insuring that SBT is not unfairly using its regulated public telephone monopoly to enter into adjacent enhanced services markets by practicing unfair marketing *or* improperly prohibiting equal access *to* the local telephone bottleneck.

behavior in the VMS market during its trial of MemoryCall℠ has been to use its monopoly position to frustrate competition in the VMS market. Further, the Commission determines that these circumstances retard the broad regulatory goal of the Commission to promote the development of PC and VMS markets to their efficiant, competitive and. The Commission therefore determines as a matter of sound policy and practice, that SBT's current position in the VMS market must be temporarily frozen so that the Commission may design and implement appropriate regulatory controls that will prevent and/or deter anticompetitive behavior by SBT. However, once those controls are designed and implemented, SBT's trial offer of MemoryCall℠ service should resume immediately.

Fifth, the Commission shall develop a standard for determining when complete competition exists in the VMS or othu ES market. The Commission shall evaluate the development of those markets toward their efficient, competitive extreme in order to determine when SBT's presence therein may be fully deregulated.

V.

ACTION TAKEN TO PREVENT AND/OR DETER MONOPOLY ABUSE

As explained in this Order, the Commission desires to promote the development of an efficient, competitive ES market, including specifically the VMS market. SBT's presence therein will assist that development, so long as SBT is practically prevented from using its monopoly position to unfairly promote and provide its enhanced services over its competitors' similar services. The